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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by the Pasumai Thaayagam Foundation, non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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International mechanisms including ICC referral is a must for accountability and reconciliation in Sri Lanka*

United Nations Human Rights Council passed a resolution on the 26 March 2014, calling for setting up an international investigation mechanism[1] in Sri Lanka via the OHCHR. The Investigation started in June 2014 with the appointment of three distinguished Human Rights experts namely Mr. Martti Ahtisaari, Ms. Silvia Cartwright and Ms. Asma Jahangir for playing a supportive and advisory role, and to assist with independent verification throughout the investigation[2] along with a senior UN official Ms Sandra Beidas as the coordinator.

Along with many other Human Rights NGOs, Pasumai Thaayagam Foundation (Green Motherland) encouraged victims to come forward to submit statement to the OHCHR investigation on Sri Lanka (OISL). Even though the mandate fell short of a Commission of Inquiry (CoI), Pasumai Thaayagam Foundation strongly believes that the investigation will come out with a comprehensive report on violations of international human rights and humanitarian laws in respect to the conflict in Sri Lanka.

First of all Pasumai Thaayagam Foundation would like to thank the member States for passing three consecutive resolutions in promoting reconciliation and accountability in Sri Lanka. This has pushed the Sri Lankan state in a direction to address democratic deficits of Sri Lanka. Some member states believe that there is a renewed hope with the change of government in Sri Lanka. But this is just a hope, the deeds of the new government has not matched with their words yet[3]. There are serious diplomatic efforts by Sri Lanka to shelf the OISL report temporarily or indefinitely. Some of the member states are trying to compromise accountability for geo-political interests; they should not lose the moral leadership.

Pasumai Thaayagam Foundation would like to re-iterate its position on the international mechanism[4] to address accountability issues to achieve a sustainable lasting peace in the Island of Sri Lanka. So far the role of this council's actions on Sri Lanka has produced positive results and the international community should continue with the international mechanism.

International Community must not lose the sight that the ongoing political conflict is the root cause for the serious violations of human rights and crimes committed by Sri Lankan state apparatus[5]. The Panel of Experts appointed by the Secretary General Ban Ki-moon and Sri Lanka's own investigation report Lesson Learned and Reconciliation Commission (LLRC) both observed many recommendations including demilitarisation of the North and East of Sri Lanka.

Addressing land related issues, de-militarisation of the civilian land in the North and East of the island needs to be done urgently. Demilitarisation including a total disarmament, demobilisation, repatriation, reintegration and resettlement (DDRRR)[6] process needs to be implemented. But the new government has not given any positive signs on these vital issues.

The new president and the government are not willing to cooperate with the international investigation or any international mechanisms to address the accountability issues in Sri Lanka[7]. It prefers another new domestic mechanism

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[1] Resolution by UN HRC 25/... Promoting reconciliation, accountability and human rights in Sri Lanka
http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/25/L.1/Rev.1

[2] OHCHR Investigation on Sri Lanka Terms of Reference Mandate and reporting obligations
http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx

[3] C V Wigneswaran'd Tamil speech in the Northern Provincial council on 10th of February 2015

[4] Written statement* submitted by PasumaiThaayagam Foundation, to the 25th session of the HRC session.
http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/114/66/PDF/G1411466.pdf?OpenElement

[5] Wilson A Jeyaratnam, S.J.V Chelvanayakam and the Crisis of Sri Lankan Tamil Nationalism

[6] http://www.unddr.org/

[7] http://www.irinnews.org/report/101085/opening-up-sri-lanka-s-new-government-confronts-legacy-of-war

without even acknowledging the OISL's and other work of the UN. Furthermore, Sri Lanka's constitution has no provisions to investigate War Crimes, Crimes against Humanity, Genocide or mass atrocities. The constitution does not allow retrospective legislation to be passed either.[8]

Therefore, it is technically impossible to investigate the allegations of war crimes, crimes against humanity and crime of Genocide under the same international norms within the domestic process. Pasumai Thaayagam Foundation also would like to caution that multiple mechanisms of investigation both domestic and international are subjugating victims through secondary victimisation.

Secondly the new President Maithripala Sirisena and many members of the current cabinet were also part of the former government during the final phase of the war in Sri Lanka when most of the atrocities were committed. There are allegations of mass killings of civilians, indiscriminate bombings, extrajudicial killings, torture and rapes having taken place. The new President Maithripala Sirisena was the minister in charge of Defence[9] during the last two weeks of the war. Many alleged war criminals are key members of the new government[10][11]. Furthermore, the new President had command responsibility during 2009 crimes. Hence there should be no compromise on investigation of international crimes via an international independent investigation.

The current promises by the government are to silence the international community and to escape the UN pressure. Hence until accountability process and a sustainable peace is achieved the international pressure on Sri Lanka must continue.

The Tamil people in the island of Sri Lanka have lost faith in the domestic institutions. The ongoing structural genocide has been a result of complex political and economic policies of the Sri Lankan state. On 10 February 2015 the Northern Provincial Council (NPC) unanimously passed a resolution stating what happened to the Tamils in Sri Lanka is Genocide[12]. This was the lived experience of the Tamils in the island of Sri Lanka and elsewhere

The following extract from the Northern Provincial Council resolution sums up the need for an international tribunal in the island of Sri Lanka:

> "The obligation to prevent and punish genocide under the Genocide Convention is not a matter of political choice or calculation, but one of binding customary international law. This Council urges OISL to comprehensively investigate and report on the charge of genocide in its submission to the UN Human Rights Council in March 2015. The UN Security Council should refer the situation in Sri Lanka to the International Criminal Court for prosecutions based on war crimes, crimes against humanity, and genocide."13

Pasumai Thaayagam Foundation would like to highlight the member States of the plight and sufferings of the victims, who have been waiting for a long a time for justice and accountability. Only an international tribunal to investigate crimes under international law that includes war crimes, crimes against humanity and the crime of genocide in the Island of Sri Lanka can deliver sustainable peace, address impunity and non-recurrence of the crime in the future.

IC should demand for the following:

> UN Investigators and Special Rapporteurs must be given access into the island to investigate past and ongoing violations on international laws.

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[8] http://www.priu.gov.lk/Cons/1978Constitution/CONTENTS.html

[9] Daily Mirror interview Sri Lanka's sovereignty will remain intact under mehttp://www.dailymirror.lk/60193/sri-lanka-s-sovereignty-will-remain-intact-under-me

[10] http://www.tamilguardian.com/article.asp?articleid=13539 | Sri Lanka's new govt and the possibility of justice

11 Cabinet of Ministers of Sri Lanka | http://www.priu.gov.lk/Govt_Ministers/Indexministers.html

[12] Northern Provincial Council Resolution: Sri Lanka's Genocide Against Tamils http://www.jdslanka.org/images/documents/npc_resolution_on_tamil_genocide.pdf

[13] http://www.jdslanka.org/images/documents/npc_resolution_on_tamil_genocide.pdf

Sri Lankan former government's unilateral illicit ban on Tamil diaspora organisations citing UN Security Council resolution 1373 without due process must be lifted with immediate effect.

Sri Lanka should be called to sign the Rome Statute of the International Criminal Court and Sign the Declaration of Commitment to End Sexual Violence in Conflict.

Demilitarisation: It is nearly 6 years since the war ended. Normalcy needs to be brought in to the Tamil areas. Tamil women and girls are continuously being harassed by the occupying military. Sexual violence is committed with impunity. This needs to be stopped immediately.

Repeal the draconian Prevention terrorism Act that enables the government to hold innocent Tamil civilians in prison without charge for long periods of time.

The urgent humanitarian needs and the rehabilitation of the Tamil people needs to be addressed.

Pasumai Thaayagam Foundation urges the investigation team to consider the demands and facts that have been presented in the resolution unanimously passed by the Northern Provincial Council on 10 February 2015. This resolution is a reflection of the expectation of the Tamil people in Sri Lanka, and thus the UN is obliged to respect this resolution.

The UN Security Council should refer the situation in Sri Lanka to the International Criminal Court for prosecutions based on war crimes, crimes against humanity, and genocide.

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*British Tamils Forum (BTF), NGO without consultative status also shares the views expressed in this statement.